

1 BRENDAN M. KUNKLE (SBN 173292) bkunkle@abbeylaw.com

2 MICHAEL D. GREEN (SBN 214142) mgreen@abbeylaw.com

3 **ABBEY, WEITZENBERG, WARREN & EMERY, P.C.**

4 100 Stony Point Road, Suite 200

5 Santa Rosa, CA 95401

6 Telephone: 707-542-5050

7 Facsimile: 707-542-2589

8 *Attorneys for Fire Victim Claimants*

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 **In re:**

14 **PG&E CORPORATION**

15 -and-

16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY,**

18 **Debtors.**

19 ☐ Affects PG&E Corporation

20 ☐ Affects Pacific Gas and Electric Company

21 ☒ Affects both Debtors

22 **All papers shall be filed in the Lead Case,*
23 *No. 19-30088 (DM)*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**MOTION TO ALLOW/DEEM TIMELY
LATE FILING OF PROOFS OF CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
BRENDAN M. KUNKLE**

Date: December 15, 2020

Time: 10:00 a.m.

Dept: Telephonic/Video Appearances Only

United States Bankruptcy Court

450 Golden Gate Ave.

Courtroom 17, 16th Floor, San Francisco, CA

Judge: Hon. Dennis Montali

Objection Deadline: December 8, 2020

24 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY COURT
25 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED
26 PARTIES:

27 Abbey, Weitzenberg, Warren & Emery (“Abbey Law”), together with several other firms,
28 represent thousands of victims of the Fires started by PG&E in 2017 (generally referred to as the
“North Bay Fires”) and 2018 (“Camp Fire”).

Abbey Law respectfully files this motion (“Motion”) to allow late filing of proofs of claim
and deem the proofs of claim as having been timely filed for the fire victims (“Movants”) listed

1 in Exhibit A, attached hereto.

2 **I. SUMMARY OF ARGUMENT**

3 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
4 prejudice. In this case, Movants were unable to timely file proof of claim forms because they
5 reasonably did not know they had valid claims for damages until after the Claims Bar Date.
6 Movants are young adults that were attending college when their family's homes were destroyed
7 by the North Bay Fires. After the Claims Bar Date, Movants learned that they had valid claims for
8 non-economic damages they suffered from the destruction of their personal property even though
9 they were not present at their respective family's home at the time of the fire. See *Hensley v. San*
10 *Diego Gas and Electric* (2017) 7 Cal.App.5th 1337, 1352 – “fear, stress and anxiety suffered as a
11 direct and proximate result of the fire and its attendant damage, loss of use and enjoyment are
12 compensable as damages for annoyance and discomfort.” Because there is no danger of prejudice
13 to the Debtors as Debtors' estates are solvent, and all creditors stand to be paid, the Motion should
14 be granted and Movants should be allowed to file Proofs of Claim and have them deemed as
15 timely. This Court must determine whether to grant the Motion.

16 **II. FACTUAL BACKGROUND**

17 **A. Movants' Claims Arising From North Bay Fires**

18 Movants are young adults who were attending college and living away from their family
19 homes at the time of the 2017 North Bay Fires. Movants' permanent residence at the time was
20 their family's home. While at college, Movants' personal property was kept at their family's
21 home. Each of the Movants' family homes, and Movants' personal property within those homes,
22 were destroyed by the fire. Movants were not present at their family's home at the time of the fire.

23 Prior to the Claims Bar Date on December 31, 2019, Movants believed they did not have a
24 claim because they were not living at home when the fire occurred. Subsequently, Movants
25 learned that they had a valid claim despite not being present when the fire occurred because their
26 personal property was destroyed. Movants then contacted Abbey Law to submit a claim for the
27 non-economic damages associated with the destruction of their personal property. As a result,
28

1 proof of claim forms were not filed on behalf of Movants before the Claims Bar Date.

2 **B. General Procedural Background**

3 On January 29, 2019, PG&E Corporation and Pacific Gas and Electric Company
4 (“Debtors” or “PG&E”) commenced with the Court voluntary cases (“Chapter 11 Cases”) under
5 Chapter 11 of the United States Code (“Bankruptcy Code”). PG&E’s Chapter 11 filings were
6 necessitated by a confluence of factors resulting from catastrophic fires that occurred in Northern
7 California prior to the Petition Date, and PG&E’s potential liabilities arising therefrom.

8 Since, the Debtors continue to operate their businesses and manage their properties as
9 debtors in possession pursuant to 11 U.S.C. §§ 1107(a) & 1108, the Debtors’ Chapter 11 Cases are
10 being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal
11 Rules of Bankruptcy Procedure (“FRBP”).

12 **C. Plan, Disclosure Statement, and the Solicitation Procedures Motion**

13 On January 31, 2020, as Dk. No. 5590, the Debtors filed an Amended Chapter 11 Plan
14 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31,
15 2020.

16 On February 7, 2020, as Dk. No. 5700, the Debtors filed a Disclosure Statement for the
17 Amended Plan.

18 On February 19, 2020, as Dk. No. 5835, the Debtors filed Motion for Entry of an Order (I)
19 Approving Form and Manner of Notice of Hearing on Proposed Disclosure Statement; (II)
20 Establishing and Approving Plan Solicitation and Voting Procedures; (III) Approving Forms of
21 Ballots, Solicitation Packages, and Related Notices; and (IV) Granting Related Relief (the
22 “Solicitation Procedures Motion”).

23 On March 16, 2020, as Dk. No. 6320, the Debtors filed the Amended Chapter 11 Plan
24 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16,
25 2020.

26 On March 17, 2020, the Solicitations Procedures Motion was approved and the
27 Disclosure Statement and Plan circulated for votes.
28

1 The Debtors Amended Chapter 11 Plan Debtors' and Shareholder Proponents' Joint
2 Chapter 11 Plan of Reorganization Dated March 16, 2020 [Docket No. 6320] was amended on
3 May 22, 2020 [Docket No. 7521], and on June 19, 2020 [Docket No. 8048].

4 On June 20, 2020, an order was issued confirming Debtors' and Shareholder Proponents'
5 Joint Chapter 11 Plan of Reorganization Dated June 19, 2020 [Docket No. 8053].

6 **D. Extended Bar Date for Fire Victim Creditors**

7 The deadline for filing proofs of claim with respect to any prepetition claim including, but
8 not limited to, all claims of Fire Claimants, Wildfire Subrogation Claimants, Governmental Units
9 and Customers, and for the avoidance of doubt, including all secured claims and priority claims,
10 against either of the Debtors was October 21, 2019 at 5:00 p.m. ("General Bar Date"). The
11 deadline for filing claims was extended to December 31, 2019 ("Extended Bar Date"), solely for
12 the benefit of any non-governmental Fire Claimants who did not filed Proofs of Claim by the
13 General Bar Date.

14 **III. LEGAL ARGUMENT**

15 In a Chapter 11 case, the time to file a proof of claim may be extended under certain
16 circumstances. Fed. R. Bank. Pro. 3003(c)(3); Fed. R. Bank. Pro. 9006(b)(1). The bankruptcy
17 court has "broad equitable powers" in a Chapter 11 case with respect to the timing requirement for
18 proofs of claim. *Pioneer Inventory Services v. Brunswick Associates Limited Partnership*, 507
19 U.S. 380, 389 (1993). All in all, Rule 9006(b)(1) allows "late filings caused by inadvertence,
20 mistake, or carelessness, not just those caused by intervening circumstances beyond the party's
21 control." *Id.*, at 381. Even a creditor that did in fact receive notice may file a proof of claim
22 notwithstanding the expiration of a claims bar date in a Chapter 11 case upon a showing of
23 "excusable neglect." *Id.* At 394-95 ("Had respondents here been prevented from complying with
24 the bar date by an act of God or some other circumstance beyond their control, the Bankruptcy
25 Court plainly would have been permitted to find 'excusable neglect' [under FRBP 9006].").

26 In considering whether a creditor's failure was the product of "excusable neglect," the
27 court should take "account of all relevant circumstances surrounding the party's omission,"
28

1 including “the danger of prejudice to the debtor, the length of the delay and its potential impact on
2 judicial proceedings, the reason for the delay, including whether it was within the reasonable
3 control of the movant, and whether the movant acted in good faith.” *Id.* at 395; *see also Corning v.*
4 *Corning (In re Zilog, Inc.)*, 450 F.3d 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list of
5 relevant factors). Again, a late-filed proof of claim is allowable where a creditor had actual notice
6 of the bankruptcy but, due to some external reason, failed to file a proof of claim or did not realize
7 that she had to, before the bar date. *See, e.g., ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d
8 996, 1003-07 (9th Cir. 2006) (applying the *Pioneer* factors).

9 Here, consideration of all four *Pioneer* factors—as well as a fifth engrafted onto the
10 *Pioneer* analysis by some courts—weighs in favor of allowing Movants to file late proofs of
11 claim.

12 The first *Pioneer* factor weighs overwhelmingly in Movants’ favor because there is no
13 danger of prejudice to the Debtors in this case. Debtors’ estates are solvent, and all creditors stand
14 to be paid. *See, e.g., In re Best Payphones, Inc.*, 523 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015) and *In*
15 *re Sheehan Mem’l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate
16 is solvent, “the proper remedy for a late filing is not the expungement of a claim, but its allowance
17 as a tardily filed claim only.).

18 The second *Pioneer* factor is also satisfied by Movants because the length of the delay in
19 filing Proof of Claim forms was minimal and will not impact the bankruptcy proceeding. Movants
20 contacted Abbey Law as soon they realized they had a valid claim for “annoyance and discomfort”
21 non-economic damages based on their personal property being destroyed by the fire. *See Hensley*
22 *v. San Diego Gas and Electric* (2017) 7 Cal.App.5th 1337, 1352 – “fear, stress and anxiety
23 suffered as a direct and proximate result of the fire and its attendant damage, loss of use and
24 enjoyment are compensable as damages for annoyance and discomfort.” Counsel for Movants
25 then filed the subject motion expeditiously. The claims process is ongoing and, as such, Movants’
26 delay in filing their claims is negligible relative to the bankruptcy proceeding. Permitting
27 Movants to file late claims will have no effect on the bankruptcy given its current status.

1 The third and fourth *Pioneer* factors, the reasonableness in the delayed filing and whether
2 Movants acted in good faith, are also met. Movants contacted the Abbey Firm as soon as they
3 learned that they had valid claims based on the destruction of their personal property by the fire.
4 Unfortunately, Movants learned about the validity of their claims after the Claims Bar Date.
5 Movants' delay in learning that they had claims despite not evacuating their homes was reasonable
6 and in good faith. Movants were all young adults in their early 20's when the Claims Bar Date
7 passed and could not reasonably be expected to know that they had valid claims despite not being
8 physically present at their respective family's home at the time of the fire. Movants' delay was
9 therefore the result of reasonable and excusable neglect.

10 Lastly, any prospect of prejudice beyond solvency is unlikely given (a) distributions have
11 not been made; and (b) the value of Movants' claims relative to the value of Debtors' estates is
12 low. *See, e.g., In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the late claim
13 in relation to the estate is a consideration in determining prejudice).

14 IV. CONCLUSION

15 For the reasons set forth above, Movants respectfully request that this Court enter an order
16 pursuant to Bankruptcy Rule 9006(b)(1) as follows:

- 17 1. Granting the Motion;
- 18 2. Finding that Movants be allowed to file Proofs of Claim and deem them as having been
19 timely filed;
- 20 3. Granting such other or further relief as the Court deems just and proper.

21 DATED: November 4, 2020

ABBEY, WEITZENBERG, WARREN & EMERY PC

22
23 By: /s/ Brendan M. Kunkle
24 BRENDAN M. KUNKLE (SBN 173292)
25 **ABBEY, WEITZENBERG, WARREN &**
26 **EMERY PC**
27 100 Stony Point Road, Suite 200
28 Santa Rosa, CA 95401
Telephone: 707-542-5050
Facsimile: 707-542-2589
bkunkle@abbeylaw.com
Attorneys for Numerous Fire Claimants

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Brendan M. Kunkle
Brendan M. Kunkle

1 **DECLARATION OF BRENDAN M. KUNKLE**

2 I, BRENDAN M. KUNKLE, say and declare as follows:

3 1. I am an individual over 18 years of age and competent to make this Declaration.

4 2. If called upon to do so, I could and would competently testify as to the facts set
5 forth in this Declaration.

6 3. I am an attorney at law duly admitted to practice before this Court and courts of the
7 State of California.

8 4. I am an attorney with the law firm of Abbey, Weitzenberg, Warren & Emery,
9 attorneys of record for hundreds of victims of the fires started by PG&E in 2017 (the numerous
10 fires generally referred to as the “North Bay”), and 2018 (“Camp Fire”).

11 5. I make this Declaration in support of the motion to allow late filing of proofs of
12 claim (“Motion”) on behalf of the fire victims (“Movants”) listed in Exhibit A, attached hereto.
13 Movants are represented by Abbey, Weitzenberg, Warren & Emery.

14 6. Movants did not file claims before the December 31, 2019 claims bar date
15 due to reasonable and excusable delay and should be allowed to file proofs of claim after the bar
16 date.

17 7. Movants are young adults who were attending college and living away from their
18 family homes at the time of the 2017 North Bay Fires. Movants’ permanent residence at the time
19 was their family’s home. While at college, Movants’ personal property was kept at their family’s
20 home. Each of the Movants’ family homes, and Movants’ personal property within those homes,
21 were destroyed by the fire. Movants were not present at their family’s home at the time of the fire.

22 8. Prior to the Claims Bar Date on December 31, 2019, Movants believed they did not
23 have claims because they were not living at home when the fire occurred. Subsequently, Movants
24 learned that they had valid claims despite not being present when the fire occurred because their
25 personal property was destroyed. Movants then contacted Abbey Law to submit claims for the
26 non-economic damages associated with the destruction of their personal property. As a result, no
27 proof of claim forms were filed on behalf of Movants before the Claims Bar Date.

28

1 I declare under penalty of perjury under the laws of the State of California that the forgoing
2 is true and correct and executed this 4th day of November 2020.

3
4 /s/ Brendan M. Kunkle
5 BRENDAN M. KUNKLE
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1

2

3

EXHIBIT A

LIST OF MOVANTS

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
1. Gearing, Olivia Claire
2150 Vintage Cir
Santa Rosa, CA 95404-1351
Date of Birth: June 5, 1998
Parents: Vincent and Christina Gearing
 2. Gearing, Samuel Vincent
2150 Vintage Cir
Santa Rosa, CA 95404-1351
Date of Birth: June 5, 1998
Parents: Vincent and Christina Gearing
 3. Gustavson, Max
1328 Cashew Rd
Santa Rosa, CA 95403-1543
Date of Birth: March 30, 1999
Parents: Andy and Susan Gustavson
 4. Harrison, Riley
3609 Aaron Dr
Santa Rosa CA 95404-1504
Date of Birth: October 31, 1997
Parents: Jennifer and Miles Harrison
 5. Vidaurri, Marina
2220 Newgate Court
Santa Rosa CA 95404
Date of Birth: May 23, 1998
Parents: David Vidaurri and Margaret Marquez
 6. Weil, Sydney
190 Ursuline Road
Santa Rosa CA 95403
Date of Birth: January 31, 1996
Parents: Joshua Weil and Claire Mollard
 7. Weil, Caleb
190 Ursuline Road
Santa Rosa CA 95403
Date of Birth: September 27, 1997
Parents: Joshua Weil and Claire Mollard

1 8. Weinert, Dana
2 4465 Parker Hill Rd
3 Santa Rosa, CA 95405
4 Date of Birth: April 4, 1997
5 Parents: Ashley Weinert and Melinda Lansdowne

6 9. Weitzenberg, Gavin
7 3554 Southridge Drive
8 Santa Rosa CA 95403
9 Date of Birth: March 11, 1999
10 Parents: Todd and Tracy Weitzenberg

11 10. Weitzenberg, Trevor
12 3554 Southridge Drive
13 Santa Rosa CA 95403
14 Date of Birth: April 30, 1997
15 Parents: Todd and Tracy Weitzenberg

16 11. Welch, Travis
17 3963 Shelter Glen Way
18 Santa Rosa CA 95404
19 Date of Birth: December 30, 1996
20 Parents: David and Lydia Welch

21 12. Wulbrecht, Derek Douglas
22 3942 Shelter Glen Way
23 Santa Rosa CA 95404
24 Date of Birth: October 26, 1992
25 Parents: Angela and Doug Wulbrecht

26 13. Wulbrecht, Tamara Sakile
27 3942 Shelter Glen Way
28 Santa Rosa CA 95404
Date of Birth: August 22, 1995
Parents: Angela and Doug Wulbrecht